CIV. NO. 99 CV 1686 BTM
CRIM. NO. 95 CR 973 BTM

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ENRIQUE AVALOS-BARRIGA,

Defendant.

TRIAL TRANSCRIPT

(October 9, 1996)

[913] THE SCENE OF THE CRIME OR UNKNOWINGLY OR UNINTENTIONALLY DID THINGS THAT WERE HELPFUL TO THE PRINCIPAL.

THE EVIDENCE MUST SHOW BEYOND A REASONABLE DOUBT THAT THE DEFENDANT ACTED WITH THE KNOWLEDGE AND INTENTION OF HELPING MEMBERS OF THE CONSPIRACY COMMIT THE IMPORTATION OR POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE.

THE GOVERNMENT IS NOT REQUIRED TO PROVE PRECISELY WHICH DEFENDANT ACTUALLY COMMITTED THE CRIME OR WHICH DEFENDANT AIDED AND ABETTED.

FOR THE CONSPIRACY CHARGE ALLEGED IN COUNT 1, THE GOVERNMENT IS NOT REQUIRED TO PROVE THAT THE AMOUNT OR QUANTITY WAS AS CHARGED IN THE INDICTMENT. IT NEED ONLY

PROVE BEYOND A REASONABLE DOUBT THAT THERE WAS A MEASURABLE AMOUNT.

THE DEFENDANT IS CHARGED IN COUNT 2 OF THE INDICTMENT WITH BEING A PRINCIPAL ADMINISTRATOR, ORGANIZER OR LEADER OF A CONTINUING CRIMINAL ENTERPRISE IN VIOLATION [sic] SECTION 848(B) OF TITLE 21 OF THE UNITED STATES CODE.

IN ORDER FOR THE DEFENDANT TO BE FOUND GUILTY OF THAT CHARGE, THE GOVERNMENT MUST PROVE EACH OF THE FOLLOWING ELEMENTS BEYOND A REASONABLE DOUBT:

FIRST, THE DEFENDANT COMMITTED A FELONY DRUG OFFENSE WHICH INVOLVED AT LEAST 150 KILOGRAMS OF COCAINE;

SECOND, THE OFFENSE WAS PART OF A CONTINUING SERIES OF THREE OR MORE OFFENSES COMMITTED BY THE DEFENDANT OVER A [914] DEFINITE PERIOD OF TIME;

THIRD, THAT THE DEFENDANT COMMITTED THE OFFENSES TOGETHER WITH FIVE OR MORE OTHER PERSONS;

FOURTH, THE DEFENDANT ACTED AS THE PRINCIPAL, ADMINISTRATOR, ORGANIZER OR LEADER OF THE FIVE OR MORE OTHER PERSONS;

FIFTH, THE DEFENDANT OBTAINED SUBSTANTIAL INCOME OR RESOURCES FROM THE VIOLATION.

THE GOVERNMENT DOES NOT HAVE TO PROVE THAT ALL FIVE OR MORE OF THE OTHER PERSONS OPERATED TOGETHER AT THE SAME TIME, NOR DOES THE GOVERNMENT HAVE TO PROVE THAT THE DEFENDANT WAS THE ONLY PRINCIPAL, ADMINISTRATOR, ORGANIZER OR LEADER OF THE ENTERPRISE.

THE GOVERNMENT NEED ONLY PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS ONE OF SEVERAL SUCH PRINCIPALS, ADMINISTRATORS, ORGANIZERS OR LEADERS.

IN REACHING A VERDICT ON COUNT 2 OF THE INDICTMENT, YOU MUST UNANIMOUSLY AGREE ON THE THREE OFFENSES CONSTITUTING THE SERIES OF VIOLATIONS OF THE FEDERAL NARCOTICS LAW AND YOU MUST UNANIMOUSLY AGREE ON AT LEAST FIVE OF THE PERSONS WHO THE DEFENDANT SUPERVISED OR MANAGED.

FINALLY, I INSTRUCT YOU THAT THE TERM "INCOME AND RESOURCES" MEANS THE RECEIPT OF MONEY OR PROPERTY.

WITH REGARD TO THE SECOND ELEMENT OF THE CONTINUING CRIMINAL ENTERPRISE CHARGED IN THE INDICTMENT, THE [915] REQUIREMENT THAT THE FELONY DRUG OFFENSE COMMITTED BY THE DEFENDANT WAS PART OF A CONTINUING SERIES OF THREE OR MORE OFFENSES COMMITTED BY THE DEFENDANT OVER A DEFINITE PERIOD OF TIME, ANY SERIES OF VIOLATIONS OF FEDERAL NARCOTICS LAWS WILL SUFFICE.

THUS, FOR EXAMPLE, ONE OF THE OFFENSES MAY BE POSSESSION WITH INTENT TO DISTRIBUTE, WHILE ANOTHER ONE OF THE OFFENSES MAY BE THE IMPORTATION OR THE ATTEMPTED IMPORTATION OF COCAINE.

IN YOUR CONSIDERATION WHETHER THE GOVERNMENT HAS PROVED A SERIES OF VIOLATIONS AS I HAVE DESCRIBED THEM, I ALSO INSTRUCT YOU THAT IT IS A FELONY VIOLATION OF THE NARCOTICS LAWS OF THE UNITED STATES TO KNOWINGLY OR INTENTIONALLY USE A TELEPHONE TO HELP BRING ABOUT ANY OF THE OFFENSES CHARGED IN COUNT 1 OF THE INDICTMENT.

I FURTHER INSTRUCT YOU THAT A SEPARATE FELONY OFFENSE IS COMMITTED EACH AND EVERY TIME A TELEPHONE IS USED IN THAT MANNER.

THE LAW DOES NOT COMPEL A DEFENDANT IN A CRIMINAL CASE THE [sic] TESTIFY. NO PRESUMPTION OF GUILT MAY BE RAISED AND NO INFERENCE OF ANY KIND MAY BE DRAWN FROM THE FACT THAT THE DEFENDANT DID NOT TESTIFY.

WHEN YOU RETIRE, YOU SHOULD ELECT ONE OF YOUR MEMBERS OF THE JURY AS YOUR FOREPERSON. THAT PERSON WILL PRESIDE OVER YOUR DELIBERATIONS AND SPEAK FOR YOU HERE IN

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